



BILLING CODE: 4510-27-P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: “Labor Standards for Federal Service Contacts Regulation 29 CFR Part 4”

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled, “Labor Standards for Federal Service Contacts Regulation 29 CFR Part 4.” This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Control Number 1235-0007, by either one of the following methods: *E-mail: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S.

Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Acting Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693-0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Wage and Hour Division (WHD) of the Department of Labor administers the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. § 351 et seq. The McNamara-O'Hara Service Contract Act (SCA) applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees. The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish

fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. Safety and health standards also apply to such contracts. The compensation requirements of the SCA are enforced by the Wage and Hour Division.

A. Vacation Benefit Seniority List

Service Contract Act section 2(a), provides that every contract subject to the Act must contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees performing work on the contract. Many wage determinations (WDs) issued for recurring services performed at the same Federal facility provide for certain vested fringe benefits (e.g., vacations), which are based on the employee's total length of service with a contractor or any predecessor contractor. *See* 29 C.F.R. § 4.162. When found to prevail, such fringe benefits are incorporated in WDs and are usually stated as "one week paid vacation after one year's service with a contractor or successor, two weeks after two years", etc. These provisions ensure that employees receive the vacation benefit payments that they have earned and accrued by requiring that such payments be made by successor contractors who hire the same employees who have worked over the years at the same facility in the same locality for predecessor contractors

B. Conformance Record

Section 2(a) of the SCA provides that every contract subject to the Act must contain a provision specifying the minimum monetary wage and fringe benefits to be paid the various classes of service employees employed on the contract work. *See* 41 U.S.C. § 351, *et seq.* Problems sometimes arise 1) when employees are working on service contracts in

job classifications that DOL was not previously informed about and 2) when there are job classifications for which no wage data are available.

Section 4.6(b)(2) of 29 C.F.R. Part 4 provides a process for “conforming” (i.e., adding) classifications and wage rates to the WD for classes of service employees not previously listed on a WD but where employees are actually working on an SCA covered contract. This process ensures that the requirements of section 2(a) of the Act are fulfilled and that a formal record exists as part of the contract which documents the wage rate and fringe benefits to be paid for a conformed classification while a service employee(s) is employed on the contract.

The contracting officer is required to review each contractor-proposed conformance to determine if the unlisted classes have been properly classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications (and wages) listed in the WD. *See* 29 C.F.R. § 4.6(b)(2). Moreover, the contracting agency is required to forward the conformance action to the Wage and Hour Division for review and approval. *Id.* However, in any case where a contract succeeds a contract under which a class was previously conformed, the contractor may use an optional procedure known as the indexing (i.e., adjusting) procedure to determine a new wage rate for a previously conformed class. *See* 29 C.F.R. §4.6(b)(2)(iv)(B). This procedure does not require DOL approval but does require the contractor to notify the contracting agency in writing that a previously conformed class has been indexed and include information describing how the new rate was computed. *Id.*

C. Submission of Collective Bargaining Agreement (CBA)

Sections 2(a) and 4(c) of the SCA provide that any contractor which *succeeds* to a contract subject to the Act and under which substantially the same services are furnished, shall pay any service workers employed on the contract no less than the wages and fringe benefits to which such workers would have been entitled if employed under the *predecessor* contract. *See* 29 CFR 4.163(a).

Section 4.6(l)(1) of Regulations, 29 C.F.R. Part 4, requires an incumbent (predecessor) contractor to provide to the contracting officer a copy of any CBA governing the wages and fringe benefits paid service employees performing work on the contract during the contract period. These CBAs are submitted by the contracting agency to the Wage and Hour Division of the Department of Labor where they are used in issuing WDs for successor contracts subject to section 2(a) and 4(c) of SCA. *See* 29 CFR 4.4(c).

The Wage and Hour Division uses this information to determine whether covered employers have complied with various legal requirements of the laws administered by the Wage and Hour Division. The Wage and Hour Division seeks approval to extend this information collection related to the Labor Standards for Federal Service Contracts.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks an approval for the extension of this information collection that requires employers to make, maintain, and preserve records in accordance with statutory and regulatory requirements.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Labor Standards for Federal Service Contracts –Regulations 29 CFR Part 4

OMB Number: 1235-0007

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Total Respondents: 123,333

Total Annual Responses: 123,463

Estimated Total Burden Hours: 123,514

Estimated Time per Response: Vacation Benefit Seniority List- 1 hour

Conformance Record- 30 minutes

Conformance Indexing- 2 hours

Collective Bargaining Agreement- 5 minutes

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0

Total Burden Costs (operation/maintenance): \$0

Dated: May 14, 2019

Robert M. Waterman,

Division of Regulations, Legislation, and Interpretation

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